



NO. S 1913131  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

MICHAEL NEIL STREET and  
MARIELLE JAQUELINE ANGELLA BRULE

PLAINTIFFS

AND:

SATHER RANCH LTD. by its  
Court Appointed Receiver and Manager,  
G. MOROSO & ASSOCIATES INC.

DEFENDANT

**NOTICE OF APPLICATION**

**Name of Applicant:** C. Cheveldave & Associates Ltd., in its capacity as Receiver and Manager, without security, of all of the assets, undertakings and property of Sather Ranch Ltd., appointed by the Order of the Honourable Mr. Justice Walker on November 21, 2019.

To: Plaintiffs and to their Counsel

And to: Joe Sather and to his Counsel

And to: G. Moroso & Associates Inc., former Court Appointed Receiver, and its counsel

And to: Dennis Brodersen and Kim Brodersen

And to: Regional District of Okanagan-Similkameen (“**RDOS**”) and its solicitor

TAKE NOTICE that an application will be made by the applicant **by teleconference** to the presiding Judge in Chambers at the Courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia, on **Wednesday, September 9, 2020 at 9:45 a.m.** for the orders set out in Part 1 below.

**PART 1: ORDERS SOUGHT**

1. An Order substantially in the form attached hereto as **Schedule "A"** abridging the time for service, approving the transaction with the RDOS, directing the payment of real-estate commission and directing the return of the deposit to the Brodersens, all on the terms set out in more detail in the attached draft order.

2. Such further and other relief as counsel may advise and this Honourable Court may deem appropriate.

## **PART 2: FACTUAL BASIS**

3. By Order (the “**Receivership Order**”) pronounced on November 21, 2019, C. Cheveldave & Associates Ltd. was appointed as Receiver and Manager (the “**Receiver**”), without security, of the assets, undertakings and property of Sather Ranch Ltd. (the “**Debtor**”), including all proceeds thereof and including without limitation, the following lands and premises legally described as:

PID: 011-781-441  
SUB LOT 8 DISTRICT LOT 2711 SIMILKAMEEN DIVISION YALE  
DISTRICT PLAN 1190

(the “**Lands**”).

4. The Receivership Order provides, *inter alia*, that the Receiver is authorized to market the Lands for sale, to solicit offers in respect of those assets and to negotiate such terms and conditions of sale as deemed appropriate, with any eventual sale being subject to Court approval.
5. The relevant facts are set out in the Affidavit #1 Cecil Cheveldave and the Affidavit #2 of Cindy Curran, both filed herein.

### **The Lands**

6. The Lands are located at 1313 Greyback Mountain Road, Penticton, British Columbia.
7. The Receiver commissioned an independent appraisal of the Lands by Mr. Lionel Hoffman of NCA Commercial Inc. dated January 30, 2020 (the “**Appraisal**”). The appraiser concluded that the current market value of the Lands as at January 30, 2020 was is \$1,050,000.
8. On June 23, 2020, the Receiver listed the Lands for sale for a list price of \$1,595,000.
9. A summary of the marketing efforts and interest received are set out in the realtor’s report attached as an exhibit to Mr. Cheveldave’s Affidavit #1.

### **The Offer**

10. On July 4, 2020, Dennis and Kim Brodersen made an offer to purchase the Lands for a purchase price of \$1,600,000. The Receiver accepted the offer subject to the approval of this Honourable Court.

11. The Completion date is September 14, 2020, and the Offer is subject only to Court approval.
12. On July 29, 2020, the Receiver filed an application seeking court approval of the sale to the Brodersens. The application was set for hearing on August 13, 2020.

### **The Expropriation Notice**

13. On August 10, 2020, the RDOS registered an Expropriation Act Notice against the Lands under registration number CA8351820 to commence the process to expropriate the lands pursuant to the terms of the *Expropriation Act*.

### **Court Approval**

14. The hearing on August 13<sup>th</sup> was adjourned to August 26<sup>th</sup> and further adjourned to September 9, 2020 with the agreement of the Brodersens and the parties.
15. In light of the pending expropriation notice, the Brodersens would prefer to not complete the purchase and to instead permit the RDOS to complete an expropriation of the lands from the Receiver. The Receiver is content to terminate the purchase contract and return the deposit to the Brodersens and further is prepared to consent to the expropriation on the condition that the receivership estate receives the same proceeds of \$1.6 million. RDOS has agreed to pay that amount.
16. On September 2, 2020, the Receiver and the RDOS entered into an Agreement to Transfer Lands in Settlement of Expropriation Proceedings. The Agreement is subject to court approval.
17. All affected parties thus support the contemplated transaction with RDOS and thus to release the Brodersens from their purchase contract.
18. The Receiver recommends the transaction with RDOS and is applying to the Court for its approval of same.

### **Ancillary Matters**

19. Even though the transaction to be approved is now a settlement of a expropriation proceedings, it is the Receiver's view that the receivership estate would not have realized the compensation in those proceedings but for the offer obtained from the Brodersens and thus the marketing efforts of the realtor engaged by the Receiver.
20. The Receiver has thus proposed that the receivership estate still pay a realtor commission on the basis of a \$1.6 million sale to the affected parties. No party has objected and accordingly the Receiver seeks the Court's direction to pay the proposed real-estate commission.

21. Finally, if the Court approves the transaction with RDOS then the Receiver proposes to terminate the contract with the Brodersens and thus is agreeable to having the deposit paid by the Brodersens of \$10,000 returned to the Brodersens in full. The Receiver thus seeks a direction from the Court confirming the return of that deposit.

**PART 3: LEGAL BASIS**

22. The proposed settlement and agreement contemplates a transfer of the Lands to RDOS and thus required court approval as a result for section 2(1)(ii) of the Receivership Order made herein.
23. Based upon the facts set out in Part 2 above, the Receiver submits that the proposed transaction with RDOS is reasonable and appropriate and the Receiver respectfully asks the court to approve it.

**PART 4: MATERIAL TO BE RELIED ON**

24. Order appointing Receiver made September 17, 2018;
25. Order appointing Receiver made November 21, 2019;
26. Affidavit #1 of Cindy Curran, sworn herein on July 29, 2020; and
27. Affidavit #1 of Cecil Cheveldave, sworn herein on July 29, 2020.
28. Affidavit #2 of Cindy Curran, sworn September 3, 2020
29. Such further and other materials as counsel may advise and this Honourable court may consider.

The applicant estimates that the application will take **5 minutes**.

This matter is not within the jurisdiction of a Master.

**TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION:** If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application:

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

- (i) a copy of the filed Application Response;
- (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
- (d) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated at the City of Kelowna, in the Province of British Columbia, this 3rd day of September, 2020.

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Scott R. Andersen  
 Lawson Lundell LLP  
 Solicitor for the Court Appointed Receiver

This Notice of Application is filed by the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2.

*To be completed by the court only:*

Order made

in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this Notice of Application

with the following variations and additional terms:

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Signature of  Judge  Master

**APPENDIX**

The following information is provided for data collection purposes only and is of no legal effect.

**THIS APPLICATION INVOLVES THE FOLLOWING:**

- Other –application by Receiver for Court Approval**

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

MICHAEL NEIL STREET and  
MARIELLE JACQUELINE ANGELLA BRULE

PLAINTIFFS

AND:

SATHER RANCH LTD. by its  
Court Appointed Receiver and Manager,  
G. Moroso & Associates Inc.

DEFENDANT

**ORDER MADE AFTER APPLICATION**

BEFORE ) WEDNESDAY, THE 9TH  
)  
) DAY OF SEPTEMBER, 2020  
)

The Notice of Application dated September 1, 2020 (the “**Application**”) of C. Cheveldave & Associates Ltd., in its capacity as Court-appointed Receiver and Manager (the “**Receiver**”) of the assets, undertakings and properties of Sather Ranch Ltd., and coming on for hearing on Wednesday, September 9, 2020, at Vancouver, British Columbia; and on hearing Scott R. Andersen, counsel for the Receiver, Steve Dvorak, counsel for the Plaintiffs, Colin Flannigan, counsel for Joe Sather; and upon reading the materials filed in support of the Application:

THIS COURT ORDERS that:

1. The time for service of the Application and materials filed in support of the Application be and is hereby abridged to the date of actual service such that the Application is properly returnable on September 9, 2020.

2. The Court hereby approves the transaction contemplated thereby, and authorizes the Receiver to enter into and perform its covenants in an Agreement to Transfer Lands in Settlement of Expropriation Proceedings dated September 2, 2020 between the Receiver as Seller and the Regional District of Okanagan-Similkameen.
3. The Court hereby directs the Receiver to pay the real-estate commission to Royal Lepage Kamloops Realty in accordance with the terms of the listing agreement effective June 26, 2020 based upon a sale price of \$1,600,000.
4. The Court hereby approves and directs that the deposit paid by Dennis Brodersen and Kim Brodersen in the amount of \$10,000 and held by Canada Flex Realty Inc. (Gill Szabo, Professional Real Estate Corporation) be returned to Dennis Brodersen and Kim Brodersen.
5. Approval as to the form of this Order by counsel other than the Receiver be and is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

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Scott R. Andersen  
Counsel for the Court Appointed Receiver

BY THE COURT

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REGISTRAR

NO. S.1913131  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

MICHAEL NEIL STREET and  
MARELLE JAQUELINE ANGELLA BRULE

**PLAINTIFFS**

**AND:**

SATHER RANCH LTD. by its Court Appointed Receiver and Manager,  
G. MOROSO & ASSOCIATES INC.

**DEFENDANT**

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**NOTICE OF APPLICATION**

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Barristers & Solicitors  
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Kelowna, British Columbia  
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Phone: (778) 738-2610  
Attention: Scott R. Andersen